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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. ~~1020~~ 684 387 92

ROBERT P. VOIGHT, JOHN M. SPINDLE, AND WILLIAM C. WILLIAMS, PARTNERS, DOING BUSINESS UNDER THE FIRM NAME OF R. P. VOIGHT & CO., PLAINTIFFS IN ERROR,

vs.

E. T. WRIGHT.

IN ERROR TO THE CORPORATION COURT OF THE CITY OF NORFOLK, STATE OF VIRGINIA.

FILED AUGUST 31, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 1028.

ROBERT P. VOIGHT, JOHN M. SPINDLE, AND WILLIAM C. WILLIAMS, PARTNERS, DOING BUSINESS UNDER THE FIRM NAME OF R. P. VOIGHT & CO., PLAINTIFFS IN ERROR,

vs.

E. T. WRIGHT.

IN ERROR TO THE CORPORATION COURT OF THE CITY OF NORFOLK, STATE OF VIRGINIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, SEPTEMBER 1, 1887.

1 VIRGINIA:

Pleas before the corporation court of the city of Norfolk, at the court-house thereof, on Wednesday, the 12th day of January, 1887.

Be it remembered that heretofore, to wit, in a justice's court of the city of Norfolk, on the 3d day of September, 1886, came E. T. Wright and sued out of said justice's court a warrant in words and figures following:

CITY OF NORFOLK, *To wit:*

To the high constable to execute:

You are hereby commanded to sum. R. P. Voight, Jno. M. Spindle, and W. C. Williams, trading under the firm and style of R. P. Voight & Co., to appear before me or some other justice of the peace of said city, at police court, at 11 a. m. on the 4th day of September, 1886, to answer the complaint of E. T. Wright upon a claim for money, to wit, fifteen dollars and no cents, due for inspection of flour, and make return how you execute this warrant.

2 Given under my hand and seal this 3d day of Sept., 1886.

W. H. SAUNDERS, [SEAL.]
Justice of the Peace.

Summons, 55c.; paid.

On hearing the evidence judgment is granted the plaintiff against the defendant for fifteen dollars, with interest from the 8th day of September, 1886, till paid, and costs. Given under my hand and seal this 8th day of September, 1886, *till paid, & costs. Given under my hand & seal this 8th day of Sept.*, 1886.

Principal	15 00
Serving warrant	30
I. W.	25
City tax	30
Trial	25
Commissioners, 5%	70

W. H. SAUNDERS, *J. P.* [SEAL.]

Levy on the goods and chattels of the defendant, R. P. Voight & Co., to satisfy the above judgment and costs, and make return hereof on the 22d day of Octo., 1886.

Given under my hand and seal this 8th day of Sept., 1886.

W. H. SAUNDERS, *J. P.* [SEAL.]

3 Endorsed.

Executed this 3d day of Sept., 1886, as within directed, by summoning R. P. Voight, of P. P. Voight & Co.

T. F. ROGERS, *H. C.*

Endorsed.

This day came P. P. Voight & Co., by their attorneys, Messrs.

Harmanson & Heath, & took an appeal to the corporation court, and gave Jos. E. Heath as security.

Given under my hand this 8th day of Sept., 1886.

W. H. SAUNDERS, *J. P.*

The following is a copy of the account filed with the foregoing warrant:

NORFOLK, VA., *Aug.*, 1886.

Messrs. R. P. Voight & Co. to E. T. Wright, Dr.

2.	To inspection	125	bbls.	R. P. V.	flour			2 50
5.	" "	125	"		"			2 50
6.	" "	125	"	R. P. V.	"			2 50
16.	" "	125	"	"	"			2 50
26.	" "	125	"	"	"			2 50
28.	" "	125	"	"	"			2 50
								$15 00

4 And now at this day, to wit, the day and year first herein written:

In the Corporation Court of the City aforesaid.

E. T. WRIGHT, Pl't.,

v.

R. P. VOIGHT, JNO. M. SPINDLE, and W. C. WILLIAMS, Trading under the Firm and Style of R. P. Voight & Co., D'f'ts.

Upon an appeal from the judgment of a justice of the peace.

This day came the parties, by their attorneys, who being fully heard and the evidence adduced maturely considered, it seems to the court that the act of Assembly of the State of Virginia as set forth in the Code of Virginia, edition of 1873, chapter 86 and sections therein in relation to the inspection of flour and the fees to be paid therefor, are not in conflict with the commerce clause of the Constitution of the United States, and that there is no error in the judgment rendered by the justice of the peace in this case; therefore it is considered that the same be affirmed, and that the appellee, E. T.
5 Wright, recover against the appellants, R. C. Voight, John M. Spindle, and W. C. Williams, trading under the firm style of R. P. Voight & Co., the said sum of fifteen dollars ($15.00) and one dollar and eighty cents, together with ten per centum per annum damages thereon from the 8th day of September, 1886, the payment and costs by him about his defence in this behalf expended.

MEMORANDUM.—On the trial of this cause the defendants, R. P. Voight & Co., excepted to the opinion of the court given against them on the trial aforesaid and tendered their bill of exceptions, which was received, signed, and sealed by the court and ordered to be made a part of the record in the cause.

And on the motion of R. P. Voight & Co. it is certified that this is the highest court in this State in which a final judgment in said suit can be had, where- is drawn in question the validity of a statute of this State on the ground of its being repugnant to the Constitution of the United States, and the decision is in favor of the State law.

6 And at the instance of the defendants, who desire to appeal from the foregoing judgment, execution is suspended — the a period of ninety days from this date upon the execution by said defendants or some one for them of a bond in the penalty of thirty dollars and conditioned according to law.

The following is a copy of the bill of exceptions filed herein:

E. T. WRIGHT. *v.* R. P. VOIGHT & CO.

On an appeal, &c.

Be it remembered that upon the trial of this cause the following statement of facts were agreed between the parties, to wit: The following facts are agreed in this case to have the same force and effect as if regularly proved by competent proof:

1st. The plaintiff is the flour inspector for the city of Norfolk, duly appointed and commissioned as such.

2d. The defendants are wholesale grocery merchants, con-

7 ducting their business in the said city.

3d. The bill of the plaintiff is for the inspection of 750 barrels of flour belonging to the defendants, and brought into this State from other States, and inspected as required by ch. 86 of the Code of Va., edition 1873, before the same was sold or offered for sale and after the same was placed in his store-house.

THOMAS H. WILLCOX,
Att'y for Com'w'th & Counsel for Plaintiff.
HARMANSON & HEATH,
Counsel for R. P. Voight & Co.

And, to maintain the issue on his part, the plaintiff and appellee, E. T. Wright, read the sections of the statute of Virginia, as set forth in chapter 86 of the Code of Va., edition of 1873, in relation to the inspection of flour brought into this State from sister States, and, to maintain the issue on their part, the appellants and defendants, R. P. Voight & Co., read from the commercial clause of the Constitution of the United States, viz., art. I, sec. 8th, clauses 1 and 3, and section 10, clause 2, and art. IV, sec. 2, clause 1, and insisted

8 that the said sections of said statute of the State of Virginia are in conflict with the Constitution of the United States; but the court overruled the objections of the said R. P. Voight & Co., and expressed the opinion that the said statute of the State of Virginia is not in conflict with the said Constitution of the United States, and thereupon gave judgment for the plaintiff; and to this opinion of the court the defendants, R. P. Voight & Co., by their counsel, excepts and pray that this bill of exceptions may be signed,

sealed, and made a part of the record in this case, which is accordingly done.

D. TUCKER BROOKE, [SEAL.]
Judge Corporation Court of the City of Norfolk, Va.

9 STATE OF VIRGINIA, *City of Norfolk,* } *To wit:*

I, Lawr. L. Waring, D. clerk of the corporation court of the said city of Norfolk and State of Virginia, do hereby certify that the foregoing and annexed record in the suit of E. T. Wright *v.* R. P. Voight & Co. is a true abstract from the records of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, this 12th day of February, A. D. 1887, in the 111th year of the Commonwealth of Virginia.

[Seal Corporation Court, City of Norfolk, Virginia.]

LAWR. L. WARING, *D. C.*

STATE OF VIRGINIA, *City of Norfolk,* } *To wit:*

I, D. Tucker Brooke, judge of the corporation court of the said city of Norfolk, in the State of Virginia, do certify that Lawr. L. Waring, who hath given the preceding certificate, is D. clerk of the said court, and that his said attestation is in due form.

Given under my hand this 12th day of February, A. D. 1887.

D. TUCKER BROOKE,
Judge of the Corporation Court of the City of Norfolk.

STATE OF VIRGINIA, *City of Norfolk,* } *To wit:*

I, Lawr. L. Waring, D. clerk of the corporation court of the said city of Norfolk and State of Virginia, do hereby certify that Hon. D. Tucker Brooke, whose genuine signature appears to the certificate above, is the only judge of the said corporation court, and that all his official acts as such are entitled to full faith and credit.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, this 12th day of February, A. D. 1887, in the 111th year of the Commonwealth of Virginia.

[Seal Corporation Court, City of Norfolk, Virginia.]

LAWR. L. WARING, *D. C.*

10 [Endorsed:] E. T. Wright *v.* R. P. Voight & Co. Appeal. Copy. $5.60, fee.

11 *Petition for a Writ of Error to the Corporation Court of the City of Norfolk.*

In the Supreme Court of the United States.

E. T. WRIGHT, Plaintiff, *v.* R. P. VOIGHT & Co., Defendants.

To the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States:

And now come Robert P. Voight, John M. Spindle, and William C. Williams, citizens of the State of Virginia and merchants and partners doing business in the city of Norfolk, in said State, under the firm name of R. P. Voight & Co., by Harmanson & Heath, their attorneys, and complain that in the record and proceedings, and also in the rendition of a judgment in a suit between E. T. Wright, plaintiff, and Robert P. Voight, John M. Spindle, and William C. Williams, merchants and partners trading under the firm name of R. P. Voight & Co., defendants, in the corporation court of the city of Norfolk, being the highest court of law or equity of the said State in which a decision could be had in said suit, and in which a final judgment was rendered against them on the 12th day of January, 1887, in said suit, wherein was drawn in question the validity of section 10, ch. 86, Code of Va., 1873, which reads, "All flour brought into this State and offered for sale therein shall be reviewed and have the Virginia inspection marked thereon;" and section 11 of same ch., which reads, "Any person or persons selling or offering to sell such flour without review or inspection, as provided in the preceding section, shall be fined the sum of five dollars, for the use of the Commonwealth, for each barrel so sold or offered for sale;" and also sections 35 and 36 of same ch., which provide the fee for inspection of each barrel of flour brought into this State, and

12 by whom it shall be paid, on the ground that the statute of the State above quoted and referred to is repugnant to the Constitution of the United States, and especially to the third clause of the eighth section of article 1 of said Constitution, and the decision is in favor of the validity of said statute, all which appears in the record and proceedings in said suit, manifest error hath happened, to the great damage of the said R. P. Voight & Co:

Wherefore they pray for the allowance of a writ of error and such other process as may cause the same to be corrected by the Supreme Court of the United States.

HARMANSON & HEATH,
Att'ys for R. P. Voight & Co.

13 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judge of the corporation court of the city of Norfolk, State of Virginia, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said corporation court

before you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Robert P. Voight, John M. Spindle, and William C. Williams, partners, doing business under the firm name of R. P. Voight & Co., appellants, and E. T. Wright, appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the
14 Constitution, or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said appellants, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twenty-fifth day of February, in the year of our Lord one thousand eight hundred and eighty-seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
M. R. WAITE,
Chief Justice U. S.

15 Pursuant to the requirements of the within writ I herewith send, under the seal of the corporation court of the city of Norfolk, Virginia, distinctly and openly, the record and proceedings in said writ referred to, with all things concerning the same, together with this writ, that, the record & proceedings aforesaid being inspected, the Honorable Supreme Court of the United States may cause further to be done therein to correct any error which may be therein what of right and according to the laws and customs of the United States should be done.

Witness my hand & seal, at Norfolk, Virginia, this 26th day of July, A. D. 1887.

D. TUCKER BROOKE, [SEAL.]
Judge of the Corporation Court of the City of Norfolk, Virginia.

On the 28th day of Febr'y, 1887. I executed the within process or writ of error by delivering a copy thereof to D. Tucker Brooke, judge of the corporation court of the city of Norfolk, State of Virginia.

T. F. ROGERS.

Sworn to and subscribed by T. F. Rogers before me this 1st day of March, 1887.

[Seal L. Harmanson, Commissioner, Circuit Court U. S., E. D. of Va.]

L. HARMANSON,
U. S. Commissioner.

16 The United States of America to E. T. Wright, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the corporation court of the city of Norfolk, State of Virginia, wherein Robert P. Voight, John M. Spindle, and William C. Williams, partners, doing business under the firm name of R. P. Voight & Co., are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff- in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this twenty-fifth day of February, in the year of our Lord one thousand eight hundred and eighty-seven.

M. R. WAITE,
Chief Justice U. S.

17 On this first day of March, in the year of our Lord one thousand eight hundred and eighty-seven, personally appeared T. F. Rogers, of the city of Norfolk, before me, the subscriber, L. Harmanson, a commissioner of the circuit court of the United States for the eastern district of Virginia, and makes oath that he delivered a true copy of the within citation to E. T. Wright within named.

T. F. ROGERS.

Sworn to and subscribed the 1st day of March, A. D. 1887.

[Seal L. Harmanson, Commissioner, Circuit Court U. S., E. D. of Va.]

L. HARMANSON,
U. S. Commissioner.

On the 1st day of March, 1887, I executed the within citation by delivering a copy thereof to E. T. Wright, the within-named defendant in error.

T. F. ROGERS.

before you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Robert P. Voight, John M. Spindle, and William C. Williams, partners, doing business under the firm name of R. P. Voight & Co., appellants, and E. T. Wright, appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein
14 was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said appellants, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twenty-fifth day of February, in the year of our Lord one thousand eight hundred and eighty-seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
M. R. WAITE,
Chief Justice U. S.

15 Pursuant to the requirements of the within writ I herewith send, under the seal of the corporation court of the city of Norfolk, Virginia, distinctly and openly, the record and proceedings in said writ referred to, with all things concerning the same, together with this writ, that, the record & proceedings aforesaid being inspected, the Honorable Supreme Court of the United States may cause further to be done therein to correct any error which may be therein what of right and according to the laws and customs of the United States should be done.

Witness my hand & seal, at Norfolk, Virginia, this 26th day of July, A. D. 1887.

D. TUCKER BROOKE, [SEAL.]
Judge of the Corporation Court of the City of Norfolk, Virginia.

On the 28th day of Febr'y, 1887, I executed the within process or writ of error by delivering a copy thereof to D. Tucker Brooke, judge of the corporation court of the city of Norfolk, State of Virginia.

T. F. ROGERS.

Sworn to and subscribed by T. F. Rogers before me this 1st day of March, 1887.

[Seal L. Harmanson, Commissioner, Circuit Court U. S., E. D. of Va.]

L. HARMANSON,
U. S. Commissioner.

16 The United States of America to E. T. Wright, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the corporation court of the city of Norfolk, State of Virginia, wherein Robert P. Voight, John M. Spindle, and William C. Williams, partners, doing business under the firm name of R. P. Voight & Co., are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff- in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this twenty-fifth day of February, in the year of our Lord one thousand eight hundred and eighty-seven.

M. R. WAITE,
Chief Justice U. S.

17 On this first day of March, in the year of our Lord one thousand eight hundred and eighty-seven, personally appeared T. F. Rogers, of the city of Norfolk, before me, the subscriber, L. Harmanson, a commissioner of the circuit court of the United States for the eastern district of Virginia, and makes oath that he delivered a true copy of the within citation to E. T. Wright within named.

T. F. ROGERS.

Sworn to and subscribed the 1st day of March, A. D. 1887.

[Seal L. Harmanson, Commissioner, Circuit Court U. S., E. D. of Va.]

L. HARMANSON,
U. S. Commissioner.

On the 1st day of March, 1887, I executed the within citation by delivering a copy thereof to E. T. Wright, the within-named defendant in error.

T. F. ROGERS.

18 Supreme Court of the United States.

E. T. WRIGHT, Plaintiff, *v.* R. P. VOIGHT & Co., Defendants.

Know all men by these presents that we, R. P. Voight, John M. Spindle, and William C. Williams, merchants and partners trading under the firm and style of R. P. Voight & Co., and M. L. T. Davis, C. A. Woodward, N. F. Young, and Washington Taylor, of the city of Norfolk and State of Virginia, are held and firmly bound unto E. T. Wright, of the same city & State, in the sum of two hundred and fifty dollars, to be paid to the said E. T. Wright, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Dated this 22d day of February, in the year eighteen hundred and eighty-seven.

Whereas the above-bound R. P. Voight & Co. have prosecuted a writ of error in the Supreme Court of the United States to
19 reverse the judgment rendered in the above-entitled action by the corporation court of the city of Norfolk, in the State of Virginia:

Now, therefore, the condition of this obligation is such that if the above-bound R. P. Voight & Co. shall prosecute the said writ of error to effect and answer all costs, if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

R. P. VOIGHT, [SEAL.]
On Behalf of Himself and R. P. Voight & Co.
M. L. T. DAVIS. [SEAL.]
C. A. WOODWARD. [SEAL.]
N. F. YOUNG. [SEAL.]
WASHINGTON TAYLOR. [SEAL.]

Sealed and delivered in the presence of—
L. HARMANSON.

Approved Feb. 25th, 1887.

M. R. WAITE,
Chief Justice.

UNITED STATES OF AMERICA, *Eastern District of Virginia,* } *ss:*

M. L. T. Davis, C. A. Woodward, N. F. Young, and Washington Taylor, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of two hundred and fifty dollars
20 over and above all his just debts and liabilities and all exemptions allowed him by law.

Sworn to before me this 22 day of February, A. D. 1887.

[SEAL.] L. HARMANSON,
Commissioner of the Circuit Court of the United States for the Eastern District of Virginia.

STATE OF VIRGINIA, *City of Norfolk,* } *To wit:*

I, Lawr. L. Waring, deputy clerk of the corporation court of the said city of Norfolk and State of Virginia, do hereby certify that the foregoing and annexed bond in suit of E. T. Wright *vs.* R. P. Voight & Co. is a true abstract from the records of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, this 26 day of August, A. D. 1887, in the 112 year of the Commbnwealth of Virginia.

[Seal of the Corporation Court, City of Norfolk, Virginia.]

LAWR. L. WARING, *D. C.*

STATE OF VIRGINIA, *City of Norfolk,* } *To wit:*

I, D. Tucker Brooke, judge of the corporation court of the said city of Norfolk, in the State of Virginia, do certify that Lawr. L. Waring, who hath given the preceding certificate, is deputy clerk of the said court, and that his said attestation is in due form.

Given under my hand this 26 day of August, A. D. 1887.

D. TUCKER BROOKE,
Judge of the Corporation Court of the City of Norfolk.

STATE OF VIRGINIA, *City of Norfolk,* } *To wit:*

I, Lawr. L. Waring, dep. clerk of the corporation court of the said city of Norfolk and State of Virginia, do hereby certify that Hon. D. Tucker Brooke, whose genuine signature appears to the certificate above, is the only judge of the said corporation court, and that all his official acts as such are entitled to full faith and credit.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, this 26 day of August, A. D. 1887, in the 112 year of the Commonwealth of Virginia.

[Seal of the Corporation Court, City of Norfolk, Virginia.]

LAWR. L. WARING, *D. C.*

Endorsed on cover: Virginia, city of Norfolk, corporation court. No. 1028. Robert P. Voight, John M. Spindle, and William C. Williams, partners, doing business under the firm name of R. P. Voight & Co., plaintiffs in error, *vs.* E. T. Wright. Filed August 31, 1887.

Office Supreme Court U. S.
FILED.
NOV 19, 1889
JAMES H. McKENNEY,
CLERK.

IN THE

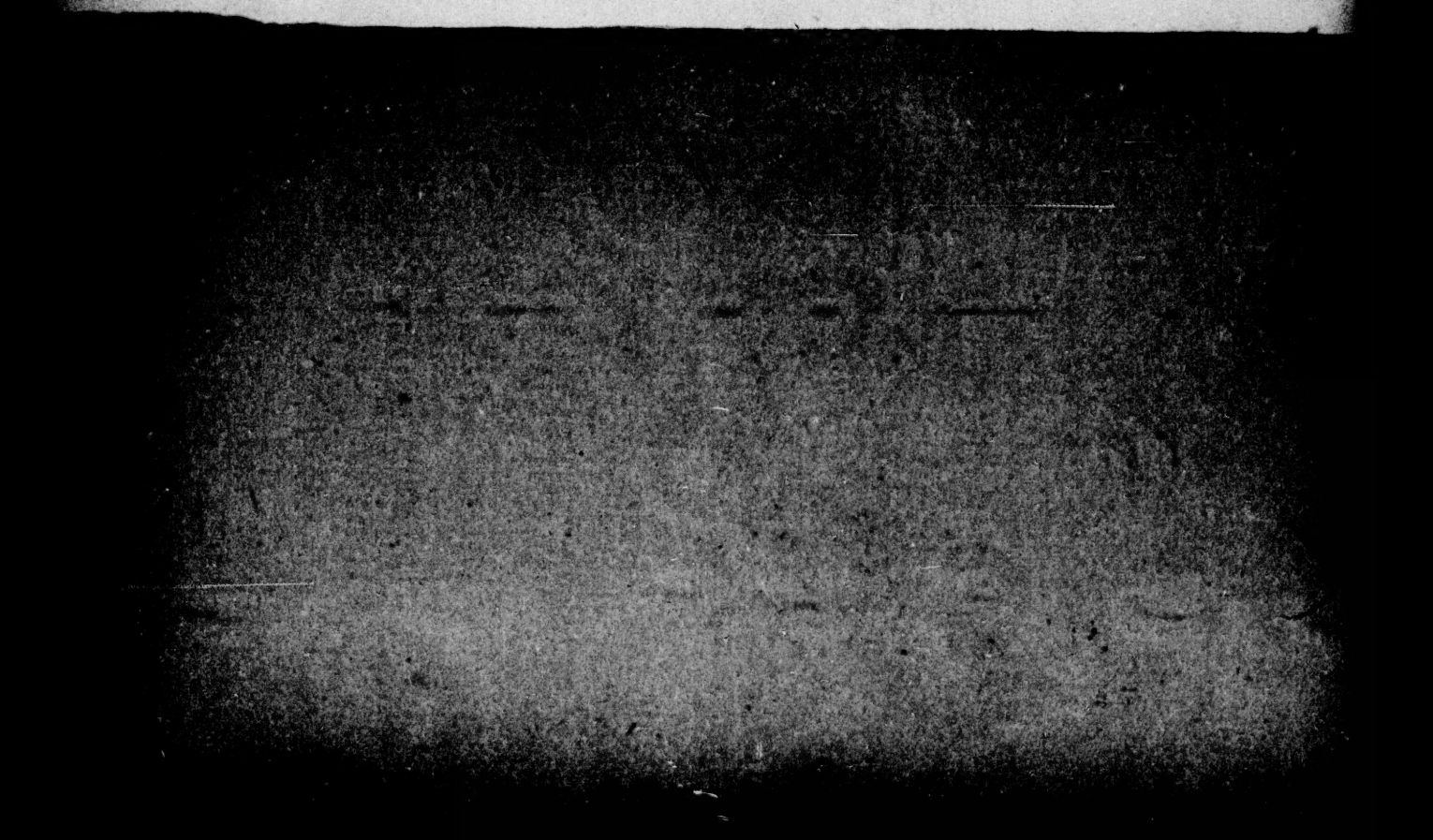
Supreme Court of the United States,

UPON A WRIT OF ERROR.

OCTOBER TERM, 1887. No. 1028.

R. P. VOIGHT & CO.
vs.
E. T. WRIGHT.

BRIEF OF PLAINTIFFS IN ERROR.



IN THE

Supreme Court of the United States,

UPON A WRIT OF ERROR.

OCTOBER TERM, 1887. No. 1028

R. P. VOIGHT & CO.

vs.

E. T. WRIGHT.

BRIEF OF PLAINTIFFS IN ERROR.

This case comes before this Court upon a writ of error to a judgment of the Corporation Court of the City of Norfolk, State of Virginia, which is the highest court in said State, and so certified by the said Corporation Court, printed record, p. 3, in which a final judgment in said suit can be had, where is drawn in question the validity of a statute of this State on the ground of its being repugnant to the Constitution of the United States, and the decision is in favor of the State law.

There is but one question involved in this case, and that is whether a statute of the State of Virginia, passed in March, 1867,

conflicts with article I, section 8, of the Constitution of the United States, which among other things provides, that "the Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

The Virginia statute reads as follows:

I. "That all flour brought into this State and offered for sale therein shall be reviewed and have the Virginia inspection marked thereon."

II. "Any person or persons selling or offering to sell such flour, without review and inspection as provided in the first section of this Act, shall be fined the sum of five dollars, for the use of the Commonwealth, for each barrel so sold or offered for sale."

See Acts of 1866–67, p. 775, Code of Virginia, edition of 1873, chapter 86, sections 10 and 11. This statute compels the inspection of all flour brought into this State from the other States and Territories of the Union and from foreign countries, and after it has been purchased by the Virginia dealers, or consigned to them, before it can be sold or offered for sale by them. This is clear. For inspecting the flour, which the statute compels to be inspected, the person offering it for inspection is required to pay an inspector an inspection fee of two cents per barrel. Code of Virginia, edition 1873, chapter 86, sections 35 and 36.

Flour made in Virginia and sold or offered for sale therein, is not required to be inspected. The law does not compel its inspection. As the law is, a merchant or dealer in Virginia buys for sale and traffic ten thousand barrels of Virginia flour, and ten thousand barrels of Ohio flour, at the same price per barrel, and when he sells or offers for sale the Virginia flour

he is not subjected to the inconvenience, delay and expense of inspection, but before he can sell or offer for sale the Ohio flour, he must notify the inspector for his county or city, who, with his auger not exceeding half an inch in diameter, repairs to the merchant's place of business and bores through the head of each of the ten thousand barrels of said flour, for which he receives two cents per barrel, or two hundred dollars from the merchant. Code of Virginia, 1873, chapter 86, sections 21-35 and 36.

Obviously the interest of the merchant or dealer requires that he should not purchase Ohio flour. Certainly not so long as he can buy Virginia flour. If the Ohio miller should agree to pay the inspection fee, still he is confronted with the delay necessarily attendant upon the inspection, which in trade and commerce necessarily operates to the detriment and prejudice of the article or commodity which is the subject of commerce. The result inevitably then of the statute is, not only to foster flour made in Virginia, at the expense of flour made in the other States and brought into this State, but to trammel trade and traffic in this article of prime necessity and general merchandise.

It is not necessary to inquire for the motive which prompted such legislation, because whatever may be the motive, "no State has the power to make any law or regulation which will affect the free and unrestrained intercourse and trade between the States, as Congress has left it, or which will impose any discriminating burden or tax upon the citizens or products of other States, coming or brought within its jurisdiction." Brown vs. Houston, 114 U. S., 622, 630.

Such legislation was inspired by the object it accomplished, namely, the fostering of this Virginia commodity of merchandise and commerce at the expense of the other States

of this Union. Prior to the passage of the legislation in question, Virginia had a uniform system of inspection laws, and never before in her history was the inspection of flour compulsory. If considerations of the public health induced its passage, it is singular that they never existed in a period of more than eighty years before, and equally singular, that since the pendency of this litigation, the Legislature should have repealed the law. See Act of the Virginia Legislature of 1887–88, p. 52, chapter 49.

No State or country has ever, or will ever, require the inspection of flour in the manner provided by this statute, as a means of preserving the public health and preventing the introduction of disease. The duty and the necessity of the protection of the health of the State were as great and overshadowing in importance up to the passage of this Act, and since its repeal, as when it was enacted, and yet our law-makers before its passage did not deem, and since its repeal have not considered such a law proper or necessary. The suggestion that the statute here called in question was in the interest of the public health is not only not borne out by the facts, but the contrary is shown by an examination of the law itself. The right of a State, in the exercise of her police powers, to enact such legislation as will guard and protect the health of her citizens, is not denied or questioned, but in the exercise of her police powers, "a State will not be permitted to interfere with the free and unrestrained intercourse and trade between the States, as Congress has left it, or impose any discriminating burden or tax upon the citizens or products of other States, coming or brought within its jurisdiction."

The statute, the validity of which is questioned in this suit, does interfere with and impede commerce between the States,

and does impose a discriminating burden and tax upon a product of other States coming or brought within Virginia, not imposed upon the like Virginia product. The plaintiffs in error here, were required to discharge a burden of fifteen dollars on flour brought into this State, which would not have been exacted of them, had they dealt in Virginia flour. If the State had the right to impose this burden and tax of fifteen dollars, it had the right to impose a tax of $15,000—or to prevent the introduction altogether of all foreign flour. This is the logical effect and result of the ruling of the Court below.

This Court has so often and with such emphasis pronounced such legislation as is the subject of attack in this suit, invalid and vicious, that we deem any extended examination of the question involved useless. A glance at some of the adjudicated cases is sufficient

In Webber vs. Virginia, 103 U. S. Rs, p. 344, this Court uses the following language: "Commerce among the States in any commodity can only be free when the commodity is exempted from all discriminating regulations and burdens imposed by local authority by reason of its foreign growth or manufacture." The facts which justified the use of this language were found in the enactment by this State of a law which required a license for the sale of sewing machines manufactured *out* of Virginia, not imposed upon the sale of sewing machines manufactured *within* her jurisdiction. The State could require a license for the sale of machines—but could not discriminate in favor of her own manufacture. It matters not how the burden or tax is laid, whether directly or indirectly, whether upon the article itself or in the form of a license tax, or an inspection tax, if by reason of the foreign character of the article it is discriminated against, the provision of the Constitution of the

United States vesting the power in Congress to regulate commerce among the several States is violated.

In Brown vs. Maryland, 12 Wheat., 419, it was decided that the authority of the National Government over commerce reaches the interior of every State of the Union and protects the products of other States from all discrimination imposed on account of their foreign origin.

In Woodruff vs. Parham, 8 Wall., 123, it was held that a law operating in favor of the products of one State to the prejudice of those of others, or the rights of their citizens, is an infringement of the Constitution of the United States.

In Ward vs. Maryland, 12 Wall., 418, a statute which required of non-residents a license to sell within the limits of the city of Baltimore any goods and wares, other than the products and manufactured articles of Maryland, was declared repugnant to the Constitution. A like ruling was made in Welton vs. State of Missouri, 91 U. S. R., 275.

In Guy vs. Baltimore, 100 U. S. R., 434, the facts were these:

By an Act of the General Assembly of Maryland authority was conferred upon the municipal authorities of the city of Baltimore to collect to the use of the city such wharfage as they might deem reasonable from all vessels landing, depositing or transporting goods or articles, *other than the products of that State*, on any wharf belonging to the city or any public wharf therein, other than the wharves belonging to or rented by the State, and pursuant to said Act the constituted authorities of said city passed an ordinance requiring wharfage of all vessels landing goods, wares and merchandise on the public wharves of the city, *other than the products of the State of Maryland.* Guy, a resident of Virginia, and master and part owner of a vessel, carried from the county of Accomac, in said State of Virginia, a cargo of 220 barrels of potatoes and landed them

on one of the wharves belonging to the city. A demand was thereupon made upon Guy by the proper officer for the payment of $4.40 wharfage, which he refused to pay. Suit was then entered by the city against Guy, and judgment rendered against him by a justice of the peace for the said amount.

This judgment was affirmed by the City Court of Baltimore, which was the highest Court of Maryland in which a decision of the case could have been had, and as the validity of statute of a State, upon the ground of its repugnancy to the Constitution of the United States, was drawn in question, and the decision of the State Court was in favor of the statute, under the twenty-fifth section of the Judiciary Act, the case was brought to this Court for review. In the very able and lucid opinion delivered by this Court we find the following language: "The fees which it exacts to that end, although denominated wharfage dues, cannot be regarded, in the sense of our former decisions, as compensation merely for the use of the city's property, but as a mere expedient or device to accomplish by indirection what the State could not accomplish by a direct tax, viz: build up its domestic commerce by means of unequal and oppressive burdens upon the industry and business of other States.

"Such exactions, in the name of wharfage, must be regarded as taxation upon inter-State commerce. Municipal corporations owning wharves upon the public navigable waters of the United State, and *quasi* public corporations transporting the products of the country, cannot be permitted by discriminations of that character to impede commercial intercourse and traffic among the several States and with foreign nations.

"In the exercise of its police powers a State may exclude from its territory, or prohibit the sale therein, of any articles

which in its judgment, fairly exercised, are prejudicial to the health or which would endanger the lives or property of its people. But if the State, under the guise of exerting its police powers, should make such exclusion or prohibition applicable solely to articles of that kind that may be produced or manufactured in other States, the Courts would find no difficulty in holding such legislation to be in conflict with the Constitution of the United States."

The law we are considering is an inspection law only in name. It has none of the characteristics or purposes of a *bona fide* inspection law. The subject acted upon is an article of commerce before the law has any application. By the process of inspection required it is not prepared for commerce, nor is its quality in any way improved. Its purpose is not to prepare the article for commerce, nor to improve its quality, for if its was Virginia flour would be subjected to the same requirements. A State cannot under the guise of inspection laws impose burdens solely upon the products or manufactured articles of other States and exempt like products or manufactured articles of its own from such burdens. Unlike the law of Maryland which was assailed in Turner vs. Maryland, 107 U. S. R., 38, it does not deal with the products of Virginia, but with the products of other States. Mr. Justice Blatchford, in delivering the opinion of the Court, in Turner vs. Maryland, *supra*, says on pages 58 and 59: "In this case no inspection is involved except that of tobacco grown in Maryland, and we must not be understood as expressing any opinion as to any provisions of the Maryland laws which refer to the inspection of tobacco grown out of Maryland."

Had that case presented a question of discrimination in

favor of tobacco grown or manufactured in Maryland, and to the prejudice of the like article produced or manufactured in the other States, we are shut up to the conclusion from the opinion of the Court, that the judgment would have been the opposite of what is was.

We submit that the judgment of the Corporation Court of the City of Norfolk is erroneous and should be reversed, and in addition to the authorities already cited in support of this position, beg leave to refer to the following:

Tiernan vs. Rinker, 102 U. S. R., 123.

Bowman vs. Chicago & N.-W. Railway Co., 125 U. S. R, 465.

Asher vs. Texas, 128 U. S. R., 129.

Robbins vs. The Shelby Taxing District, 120 U. S. R., 489.

Respectfully submitted,

JAMES E. HEATH,

Attorney for Plaintiffs in Error.